IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12674 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

KETANKUMAR NARNEDRABHAI SINGALA - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR KISHOR M PAUL for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

The petitioner, Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Rajkot dated 30th September 2004 in Reference (IT) No. 152 of 2000 by which the Industrial Tribunal has partly allowed the said

Reference directing the petitioner to appoint the respondent as 'Clerk' on compassionate ground as heir of deceased workman Narendrabhai K. Singala.

2. Few facts are necessary for the purpose of determination of the aforesaid Special Civil Application. One Narendrabhai K. Singala was serving with the petitioner Corporation and he died on 28.12.1982. The respondent being heir of deceased workman applied for appointment on compassionate ground as Clerk on 31st January 1997 and considering the fact that the application of the respondent was beyond the period of 10 years and not within the time prescribed as per the scheme for appointment on compassionate ground, by communication dated 24.4.1998 the application of the respondent came to be rejected. The respondent raised an industrial dispute for appointing him as Clerk on compassionate ground on the death of his father which was referred to the Industrial Tribunal, Rajkot, and numbered as Reference (IT) No. 152 of 2000. It was contended on behalf of the respondent that he had attained the age of majority on 13th January 1997 and immediately thereafter he had applied for appointment on compassionate ground and therefore the petitioner Corporation has erred in rejecting his application for appointment on compassionate ground as a Clerk. The said Reference was opposed by the petitioner Corporation and it was submitted on behalf of the petitioner Corporation that as per the settlement

under which the appointment on compassionate ground is to be given if the heir is a minor in that case if within 10 years he attains the age of majority the case can be considered for appointment on compassionate ground. However, in the present case the workman has died on 28.12.1982 and 10 years were over in the year 1992 but the application of the respondent was made in 1997, i.e., after a period of almost 15 years of the death of the deceased workman and therefore even as per the settlement and the scheme the respondent is not entitled to appointment on compassionate ground and so submitting requested to reject the Reference.

3. It appears that the Industrial Tribunal became very emotional while observing that it was not the fault on the part of the respondent that he was not born earlier and that the respondent was got-up in absence of his father and so observing has held that the application for compassionate ground cannot be rejected on technical ground of delay considering the benevolent object of the scheme and accordingly directed the petitioner Corporation to appoint him as Clerk on compassionate ground within a period of one month. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Rajkot dated 30th September 2004, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Ashish M. Dagli, learned advocate appearing for the Corporation has vehemently submitted that the direction issued by the Tribunal on the petitioner to appoint the respondent as Clerk on compassionate ground on the death of his father who died in 1982 is contrary to the settlement under which appointment on compassionate ground is to be made. The same is also contrary to the object for which the appointment on compassionate ground is made. He has relied upon the following Judgments of the Hon'ble Supreme Court in support of his submissions;

1. State of Manipur Vs. Md. Rajodin, reported in (2003) 7 SCC Page 511.

2. Haryana State Electricity Board and Another Vs. Hakim Singh. reported in (1997) 8 SCC Page 85.

3. State of U.P. Vs. Paras Nath, reported in (1998) 2 SCC Page 412.

4. Haryana State Electricity Board Vs. Naresh Tanwar and Another, reported in (1996) 8 SCC Page 23.

He has also relied upon unreported Judgments of this Court in the case of *Gujarat State Road Transport Corporation Vs. Jitendrabhai Babulal Gujarati* delivered in Special Civil Application No. 5653 of 1998; and in the case of *Muktabhai, widow of S.K. Dabhi Vs. G.S.R.T.C.,* rendered in Special Civil Application No. 8693 of 1990.

5. Relying upon the Judgment of the Hon'ble Supreme Court in the case of *State of Manipur (supra),* it is submitted that as held by the Hon'ble Supreme Court the purpose of providing compassionate appointments is to mitigate the hardship caused due to sudden death of the breadwinner in the family and it is to alleviate the distress of the family that such appointments are made but these considerations cannot operate when the application is made after a long delay. He has also further submitted that in the case of *Haryana State Electricity Board and Another (supra)*, when the High Court of Punjab and Haryana holding that in case of minor child the period of 3 years would be applicable from the date he becomes major it has directed to give appointment on compassionate ground, the Supreme Court, while quashing and setting aside the Judgment of the Punjab and Haryana High Court, has held that if the family members of the deceased family can manage after 14 years of his death one of his legal heirs cannot put forward a claim as for it is a line of succession by virtue of a right of inheritance as the object of provision is to give succour to the family to tide over the sudden financial crisis befallen the dependant on account of untimely demise of his sole earning member. Relying upon the aforesaid Judgments of the Hon'ble Supreme Court, Shri Dagli has submitted that the direction issued by the Industrial Tribunal to give appointment to the respondent on

compassionate ground as heir of deceased workman after a period of 17 years would be contrary to the object and scheme for which appointment on compassionate ground is made. It is also further submitted by him that even the learned Single Judge of this Court in the case of *G.S.R.T.C. Vs. Jitendra Bhailal Gujarati* relying upon the Judgment of the Hon'ble Supreme Court in the case of *Haryana State Electricity Board & Another (supra*) has even gone to the extent that even in settlement in violation of Articles 14 and 16 of the Constitution of India shall be void and render it enforceable by the Court of law and therefore it is requested to allow the present Special Civil Application.

6. Shri Kishor M. Paul, learned advocate appearing on behalf of the respondent has tried to support the judgment and award passed by the Industrial Tribunal and has submitted that when the Industrial Tribunal has considered that looking to the benevolent object of the scheme/settlement under which appointment on compassionate ground is to be made for heir of the deceased workman the application for compassionate ground should not be rejected on the ground of delay and ultimately has directed the petitioner to appoint the respondent as Clerk on an application which was submitted by the respondent on attaining the age of majority, it is requested to

dismiss the present Special Civil Application by submitting that the impugned order is not required to be interfered with by this Court exercising power Article 226/227 of the Constitution of India.

7. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the deceased workman died on 28.12.1982 and that the respondent applied for the first time on 13th January 1997 on attaining the age of majority. As per the settlement under which appointment is to be given on compassionate ground in a case where at the time of death of a workman his heir is minor an application can be made within the period of 10 years but thereafter no application can be entertained. Considering the fact that the application was submitted after a period of 15 years from the date of death of the workman the application came to be rejected. Therefore the rejection by the petitioner was in consonance with the settlement under which appointment on compassionate ground is to be made. As held by the Hon'ble Supreme Court in the case of *State of Manipur (supra)*, the purpose of providing compassionate ground is to mitigate the hardship caused due to sudden death of the breadwinner in the family and it is to alleviate the distress of the family that such appointments are made but these considerations cannot operate when the application is

made after a long delay. In the case of *Haryana State Electricity Board & Another (Supra),* the Hon'ble Supreme Court was considering the case in which the application was made after 14 years of the death of the deceased. The Apex Court has held that if in a family an employee could manage for 14 years after the death his legal heir cannot put forward his claim after a number of years for appointment on compassionate ground. The Court reminded that the object of the scheme is to give succour to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member and the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. The Hon'ble Supreme Court has also observed in Para 8 of the Judgment as under;

> 8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner.

> This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

8. In another decision in the case of *State of U.P. Vs. Paras Nath (supra)* dealing with a case where application for compassionate appointment was made 17 years after the employee's death, the Hon'ble Supreme Court has held that on such belated application, the son is not entitled to any relief.

9. In the case of *G.S.R.T.C. Vs. Jitendra Bhailal Gujarati,* the learned Single Judge of this Court, while allowing the Special Civil Application filed by the Corporation in which the judgment and award passed by the Industrial Tribunal directing the petitioner Corporation to grant compassionate appointment after a period of long delay on attaining the age of majority by the heir of deceased workman, in Para 5 has observed as under:

> "Appointment on the compassionate ground is being exception to the rule that appointments in public service is to be made directly on the basis of open invitation of application and merit. The object of exception is to mitigate the hardship due to death of the bread-winner of the family and sudden misery faced by the members of the family of such employee of the Central or

> State Government or any other public authority. This cannot be stretched to the extent of converting into a matter of right even after a number of years. Such appointment will not be covered in the exception being contrary to the doctrine of equality before law and equal opportunity in the matter of employment enshrined under Articles 14 and 16 of the Constitution of India. Even any settlement in violation of the provisions of Articles 14 and 16 of the Constitution of India shall be void and render it unenforceable by the Court of law."

10. Considering the above decisions of the Hon'ble Supreme Court as well as this Court, the direction issued by the Industrial Tribunal is not only against the object and purpose for which the appointment on compassionate ground is to be made but it is also contrary to the settlement under which appointment on compassionate grounds are made, i.e., in a case of minor the application is to be made within a period of 10 years if he attains the age of majority within 10 years. The observations made by the Industrial Tribunal in the impugned judgment and award are based more on emotional grounds rather than legal grounds. Under the circumstances, the judgment and award passed by the Industrial Tribunal, directing the petitioner to appoint the respondent as a Clerk on compassionate ground, after a period of 17 years from the date of death of the deceased workman, cannot be sustained.

11. For the reasons stated hereinabove, the petition succeeds. The judgment and award dated 30th September 2004 passed by the Industrial Tribunal, Rajkot in Reference (IT) No. 152 of 2000, is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.